

SEP 6 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTHONY WAYNE JOHNSON, Jr.,

Plaintiff - Appellant,

v.

MATTHEW CATE; ANTHONY
HEDGPETH,

Defendants - Appellees.

No. 10-16774

D.C. No. 5:10-cv-01273-JW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
James Ware, Chief District Judge, Presiding

Submitted August 11, 2011**

Before: THOMAS, SILVERMAN, and CLIFTON, Circuit Judges.

California prisoner Anthony Wayne Johnson, Jr. appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action for failure to state a claim. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

the district court's dismissal of Johnson's complaint without leave to amend under 28 U.S.C. § 1915A(a). *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

Johnson failed to allege facts demonstrating that Defendant acted with intent to discriminate against him on the basis of his membership in any protected class. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1166 (9th Cir. 2005) (plaintiff alleging an equal protection violation “must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class” (internal quotation marks and citations omitted)).

Finally, the district court did not abuse its discretion in denying Johnson's motion to alter the judgment under Rule 59(e) and allow an amended complaint under Rule 15(a). *See Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (listing requirements for reconsideration under Rule 59(e)).

AFFIRMED.